



DEPARTMENT OF TRANSPORTATION

[4910-22-P]

Federal Highway Administration

[FHWA Docket No. FHWA-2016-0027]

Revision of Form FHWA-1273

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice; request for comments.

SUMMARY: The FHWA is requesting comments on a proposed revision of form FHWA-1273 – “Required Contract Provisions Federal-Aid Construction Contracts.”

This form includes certain contract provisions that are required on all Federal-aid construction projects. The revisions are necessary to provide consistency with the current policies of FHWA and other Federal agencies.

DATES: Comments must be received on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: All comments should include the docket number that appears in the heading of this document and may be submitted in the following ways:

- *E-Gov Web site:* <http://www.regulations.gov>. This Web site allows the public to enter comments on any **Federal Register** notice issued by any agency. Follow the instructions for submitting comments.
- *Fax:* 1-202-493-2251.
- *Mail:* DOT Docket Management System: U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590-0001.

- *Hand Delivery:* DOT Docket Management System; West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590-0001 between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Instructions: You should identify the docket number at the beginning of your comments.

If you submit your comments by mail, submit two copies. To receive confirmation that DOT received your comments, include a self-addressed stamped postcard. Late comments will be considered to the extent practicable.

Note: Comments are posted without changes or edits to <http://www.regulations.gov>, including any personal information provided. All comments received will be available for examination and copying at the above address from 9 a.m. to 5 p.m., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard or may print the acknowledgment page that appears after submitting comments electronically. Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). Persons making comments may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70, Pages 19477-78).

FOR FURTHER INFORMATION CONTACT: Gerald Yakowenko, Office of Program Administration, (202) 366-1562, Gerald.Yakowenko@dot.gov or William Winne, Office of the Chief Counsel, (202) 366-1397, William.Winne@dot.gov. Office

hours for FHWA are from 8:00 a.m. to 4:30 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

An electronic copy of this document may be downloaded from the Federal Register's home page at: <http://www.archives.gov> and the Government Publishing Office's database at: <http://www.access.gpo.gov/nara>.

Background

As provided in 23 CFR 633.103, Form FHWA-1273 includes contract provisions and proposal notices that are required by regulations promulgated by FHWA or other Federal agencies. The provisions include non-discrimination, prevailing wage rates, subcontracting, job-site safety, and other important requirements that must be included in every Federal-aid construction project. According to 23 CFR 633.104(a), FHWA will update the form as regulatory revisions occur. Since the form was last revised on May 1, 2012, a number of policy revisions have occurred. The revisions that are being proposed by FHWA to Form FHWA-1273 will bring the form up to date with the current requirements. The proposed revisions are being made for the following reasons:

- The U.S. Department of Labor, Office of Federal Contract Compliance (OFCCP) issued a final rule on December 9, 2014, which revised the Equal Employment Opportunity requirements for Federal and federally assisted projects. We propose to implement minor revisions in Sections II and III—*Nondiscrimination* and *Non-*

segregated Facilities to replace the terms “sex” with “sex, sexual orientation, and gender identity” to be consistent with the 41 CFR 60–1.

- Revisions are proposed to Section II.10 as follows: This section is retitled as “Assurance Required,” the assurance required by 49 CFR 26.13(b) is included verbatim, and incorporation by reference is provided for the Title VI assurance required by U.S. DOT Order 1050.2A Appendices A and E.
- A revision is proposed to the first paragraph of Section IV to address the “treatment of projects” provision in 23 U.S.C. 133(i), which requires that all projects (excluding those funded under the recreational trail set-aside) be treated as if on a Federal-aid highway.
- Revisions are proposed to Section IX—*Implementation of Clean Air Act and Federal Water Pollution Control Act* to be consistent with the provisions in Appendix II to Part 200—Contract Provisions for Non-Federal Entity Contracts Under Federal Awards in 2 CFR 200.
- Revisions are proposed to Section X—*Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion* to implement new certification language to ensure that awards are not made to companies who have a verified Federal tax delinquency or companies who have been convicted of a Federal felony offense within 2 years prior to the award. The new certifications implement the Government-wide General Provisions, currently under Division E, Title VII, Financial Services and General Government Appropriations Act, FY 2016 (Sections 745-746 in the FY 2016 Act, 129 STAT. 2485-2486 and similar

provisions in subsequent appropriations acts). In addition, the Excluded Parties List System (www.EPLS.gov) has been replaced with the System for Award Management (www.SAM.gov). The reference to this system in the form is updated.

- We propose to add a new Section XII—*Use of United States-Flag Vessels* to implement Cargo Preference Act requirements on Federal-aid projects. On October 14, 2008, President Obama signed the "Duncan Hunter National Defense Authorization Act of 2009." Section 3511 of that Act amended the Cargo Preference Act by stating the requirements apply to cargoes financed "in any way with Federal funds for the account of any persons unless otherwise exempted." This Act requires the use of a United States-Flag vessel for all oceanic shipments (or shipments across the Great Lakes) necessary for materials or equipment acquired for a specific, Federal aid highway project. See FHWA's December 8, 2015, legal opinion titled: "Cargo Preference Act and Federal-aid Projects" (available online at <https://www.fhwa.dot.gov/construction/cqit/cargo/151208.cfm>) for additional information.
- Minor grammatical and formatting revisions are proposed throughout the document for clarity and to be consistent with 2 CFR Part 200.

The proposed revision to Form FHWA-1273 will incorporate the changes noted above as well as other important changes to the required contract provisions. A list of the

proposed changes and a marked-up version of the changes are available at the following
Web site: <https://www.fhwa.dot.gov/construction/cqit/form1273.cfm>.

The FHWA anticipates issuing a second notice responding to the comments received and requiring the use of the revised form for all Federal-aid projects advertised 60 days after the publication date of the second notice.

Authority: 23 U.S.C. 112; 23 CFR 633; 49 CFR 1.85.

Issued on: November 17, 2016

Gregory G. Nadeau
Administrator
Federal Highway Administration

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